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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/686,302      | 10/15/2003  | David H. Masury      | 0194-2001US02       | 7115             |

7590

06/06/2006

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| EXAMINER |
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NGUYEN, VI X

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| ART UNIT | PAPER NUMBER |
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3734

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/686,302

Applicant(s)

MASURY ET AL.

Examiner

Victor X. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-38 is/are rejected.
- 7) ☒ Claim(s) 39-40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This is a response to the supplemental amendment dated 5/10/2006. Claims 20-40 are currently pending. The terminal disclaimer dated 3/10/2006 is also acknowledged.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-23,27-28,30-33 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohn et al. (6,053,929).

Cohn et al disclose in figures. 25,28-29, a surgical scalpel having the limitations as recited in the above listed claims, including: a housing (412) has an internal channel and a viewing window (436), a blade carrier (420) slidably disposes in the channel, where the blade carrier includes a single use indicator (432 is considered as a single use indicator) that is visible through the viewing window when the blade carrier is in the retracted position and is capable of altering when the blade carrier is moved to the extended position. Note that the procedure in figure 30 discloses the single use indicator can be a flexible convex element when the blade carrier is in the extended position, where the portion of the blade carrier is tapered to form a shimming plane at best seen in fig. 29, and where the device further has one or more tapered ribs (along the side of element 450), and where the device further has a palm support removably (430) which attached to the housing (fig. 27).

Claims 20-22,24-26,29-30,34-35 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Gringer (6,058,607).

Gringer discloses in figures.4, 7-8, a device having the limitations as recited in the above listed claims, including: a housing (2) has an internal channel and a viewing window (14), a blade carrier (22) slidably disposes in the channel, where the blade carrier includes a single use indicator (10 is considered as a single use indicator) that is visible through the viewing window when the blade carrier is in the retracted position and is capable of altering when the blade carrier is moved to the extended position. Note that the procedure in figure 37 discloses the single use indicator can be a flexible convex element when the blade carrier is in the extended position, where the portion of the blade carrier is tapered to form a shimming plane at best seen in fig. 8, where the housing includes a slot (8), where the blade carrier includes an actuator/locking (36) that extends through the slot, where the slot includes a ramp (20) formed therein for engaging the actuator/locking when the blade carrier is in the extended position, and where the blade carrier includes a leaf spring (60) that extends outwardly therefrom, where the housing is a molded plastic housing (see col. 8, lines 60-66).

***Allowable Subject Matter***

3. Claims 39 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Arguments***

4. Applicant's arguments filed 5/10/2006 have been considered but they are not persuasive.

In response to applicant's argument that the Cohn reference does not disclose a blade carrier which has a single use indicator: As claim 20 is currently written, it can be interpreted broadly that the Cohn reference at least discloses in figure 25, a blade carrier (420) slidably disposes in the channel, where the blade carrier includes a single use indicator (432 is considered as a single use indicator) that is visible through the viewing window (436) when the blade carrier is in the retracted position and is capable of altering when the blade carrier is moved to the extended position. Furthermore, the same argument will apply to the Gringer reference, where Gringer discloses in figures. 4, 7-8, a blade carrier (22) slidably disposes in the channel, where the blade carrier includes a single use indicator (10 is considered as a single use indicator) that is visible through the viewing window (14) when the blade carrier is in the retracted position and is capable of altering when the blade carrier is moved to the extended position. Accordingly, the above noted references are still considered to read on the claimed limitations of the claims noted.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



Vn  
5/29/2006



MICHAEL J. HAYES  
PRIMARY EXAMINER